



ORDINANCE 2021-006

AN ORDINANCE AUTHORIZING THE VILLAGE ADMINISTRATOR AND THE VILLAGE MAYOR TO ENTER INTO A REAL ESTATE PURCHASE AGREEMENT WITH METZCOM DEVELOPMENT, LLC TO PURCHASE REAL ESTATE AND DECLARING AN EMERGENCY.

WHEREAS, Council has determined 18.819 acres, more or less, of real property known as Tax Parcel Nos. 20-06-15-210-006, 20-06-15-210-014, and 20-06-15-226-036, Jackson Center, Ohio, and further depicted on Exhibit "A", attached hereto (the "Property"), should be purchased by the Village from Metzcom Development, LLC, ("Metzcom"), for the public purpose of construction of a detention basin; and

WHEREAS, the Property shall be purchased as outlined herein.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF JACKSON CENTER, THE STATE OF OHIO:

SECTION 1.

It is hereby determined the Property as stated in the attached Exhibit A is required by the Village for the public purpose of construction of a detention basin, and shall be purchased by the Village from Metzcom. The Village Administrator and the Village Mayor are hereby authorized to execute a Real Estate Purchase Agreement on behalf of the Village to purchase the Property from Metzcom. A copy of said Real Estate Purchase Agreement is attached hereto as Exhibit "B".

SECTION 2.

It is further determined purchase of the Property by the Village will improve the detention of storm water in the Village, and in the vicinity of the Property, will assist with managing storm water drainage to reduce the likelihood of flooding in the Village, and will promote the welfare of the citizens of the Village, and assist in the development of commercial activities to the benefit of the citizens of said Village, enable residential and commercial construction, and provide additional opportunities for residents' gainful employment and housing.

SECTION 3.

That the Village Administrator and/or the Village Mayor are hereby authorized to execute any closing documents necessary on behalf of the Village and to deliver the purchase price proceeds to Metzcom at Closing for the Property on behalf of the Village.

SECTION 4.

Council hereby declares this to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare; such emergency arising out of the necessity to purchase the Property for detention basin construction purposes, and to begin construction immediately, and to promote timely commercial and residential growth and development in the Village; and wherefore this Ordinance shall take effect and be in full force from and after its adoption by Council and approval by the Mayor.

Adopted this 23rd day of March, 2021.

Scott Klopfenstein, Mayor

Attest:

Beverly A. Wren, Fiscal Officer

CERTIFICATE OF FISCAL OFFICER AS TO POSTING

I certify that the above Ordinance 2021-006 has been posted as required by law. Posted in the Village Office, Village Website, Allenbaugh Insurance, People's Federal Savings and Loan Association and the Jackson Center Library.

Date of Posting: March 24, 2021.

Signed:

Beverly A. Wren, Fiscal Officer

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement ("Agreement") is made and entered into this 23rd day of March, 2021, by and between **METZCOM DEVELOPMENT, LLC**, an Ohio limited liability company, its successors and assigns, hereinafter referred to as "Seller"; and the **VILLAGE OF JACKSON CENTER**, an Ohio municipal corporation, its successors and assigns, hereinafter referred to as "Purchaser".

1. **DESCRIPTION OF REAL ESTATE:** Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller 18.819 acres, more or less, located in Jackson Center, Shelby County, Ohio, known as Tax Parcel Nos. 20-06-15-210-006, 20-06-15-210-014, and 20-06-15-226-036 currently owned by Rickey L. Regula and Debra D. Regula (the "Property"). The Property, along with the legal description, is shown on Exhibit A.

2. **DESCRIPTION OF CHATTELS:** Chattels included as a part of this Agreement are: None, the Property is bare ground.

3. **PURCHASE PRICE:** The purchase price for the Property is Four Hundred Twenty Thousand and 00/100 Dollars (\$420,000.00) to be paid as stated in this paragraph. Purchaser agrees to deposit One Thousand and 00/100 Dollars (\$1,000.00) ("Earnest Money") with Purchaser's attorney upon the execution of this Agreement, which amount shall be credited toward the total purchase price if Purchaser completes the purchase. The remainder of the purchase price due shall be paid at closing. If Purchaser defaults and fails to complete this Agreement, then the Earnest Money shall be forfeited to Seller.

4. **CONDITIONS OF COMPLETION:** This Agreement shall legally bind the parties to the performance of the terms and conditions contained herein, subject to the following conditions ("Contingencies"). Purchaser, in its sole discretion, shall have until March 31, 2021 to satisfy or waive the Contingencies in writing, the "Due Diligence Deadline". If the Contingencies are satisfied, or waived in writing by Purchaser, on or before the Due Diligence Deadline, the parties shall proceed to closing. If the Contingencies are not satisfied and Purchaser notifies Seller in writing, on or before the Due Diligence Deadline, the Earnest Money shall be returned to Purchaser. If Purchaser fails to notify Seller of satisfaction or waiver of the Contingencies by the Due Diligence Deadline, the Contingencies shall be assumed to have been waived, and Purchaser shall proceed to closing. The Due Diligence Deadline may be extended by the mutual agreement of the parties in writing.

- a. **Survey:** Purchaser, at its own expense, may obtain a survey of the Property prepared by a surveyor licensed under the laws of the State of Ohio, to Purchaser's satisfaction, if Purchaser determines this is necessary.
- b. **Environmental Inspections:** Purchaser, at its own expense, may obtain one or more inspections of the environmental conditions of the Property, which may include, without limitation, Phase I and/or Phase II environmental inspections, groundwater sampling, and testing for asbestos, radon, and PCB's, all conducted in accordance with ASTM standards.

- c. Zoning and Permits: Purchaser, at its own expense, must have obtained or be satisfied that it can obtain: (i) all necessary zoning approvals; (ii) all necessary permits and governmental approvals for the development of the Property; and (iii) all other approvals, tests or requirements necessary to assure the commercially viable completion of Purchaser's intended development.
- d. Utilities: Purchaser, at its own expense, must be satisfied that electricity, gas, water, sanitary sewer, storm drains, telephone and other utilities are available at certain locations on the Property in amounts sufficient for Purchaser's development and use of the Property, or that such utilities can be brought to this location at an acceptable cost.
- e. Soil Testing and Engineering: Purchaser, at its own expense, must have obtained soil tests and engineering studies (including soil, subsoil and groundwater investigations) demonstrating that the Property is suitable for Purchaser's intended use and that it does not contain "wetlands soil" as defined by the Army Corps of Engineers and the Ohio Department of Natural Resources. Remediation of any wetlands soil shall be performed at Purchaser's expense.
- f. Acquisition of the Property: Seller acquiring the 18.819 acres, more or less, Parcel Nos. 20-06-15-210-006, 20-06-15-210-014, and 20-06-15-226-036 from Ricky L. Regula and Debra D. Regula, (collectively "Regula"), prior to the Closing of the Property contemplated by this Agreement.
- g. Village Approval: The passage of legislation by the Village of Jackson Center, Ohio, Village Council approving the purchase of the Property.

5. TAXES AND ASSESSMENTS: Purchaser agrees to pay all taxes and assessments not yet due and payable, commencing with the July, 2021 installment and all thereafter.

Further, Purchaser agrees to be responsible for and pay any and all CAUV recapture required as a result of purchase of the Property.

6. CLOSING: The closing of this transaction shall occur on or before April 20, 2021, but in no event more than 20 days after satisfaction of all Contingencies stated in Section 4. The purchase price shall be due at closing. Purchaser shall pay the closing costs to complete this transaction.

7. POSSESSION: Purchaser shall be entitled to possession of the Property upon payment of the purchase price at closing.

8. ACCESS TO PROPERTY PRIOR TO CLOSING: Subject to the approval of the current owners of the Property, Ricky L. Regula and Debra D. Regula, from and after the date of this Agreement, Purchaser and its consultants and agents will have the continuing right to enter the Property to make surveys and conduct any testing and inspections Purchaser determines may be necessary. In exchange for this right of entry, Purchaser will: (i) conduct all inspections, testing,

studies and investigations at Purchaser's sole risk and expense; (ii) restore the Property to substantially the same condition as before Purchaser's investigations; and (iii) indemnify and hold Seller harmless from any claim or damages arising out of any personal injury or property damage caused by or occurring to Purchaser or its consultants and agents at the Property.

9. TRANSFER DOCUMENTS: At closing, Seller shall deliver a good and sufficient Warranty Deed, conveying marketable title, free of all encumbrances and liens, but subject to all covenants, conditions and restrictions of record. In the event there are any title defects, Seller shall have a reasonable time to correct said defects, not to exceed 45 days after the discovery thereof unless otherwise agreed upon by Purchaser. Seller shall deliver an affidavit in standard form to assure Purchaser that there are no mechanic's liens or rights to mechanic's liens for the Property. Seller shall furnish the standard conveyance fee form. There is no conveyance fee tax to the Auditor as the Purchaser is exempt. Purchaser will pay deed preparation and Purchaser will pay the recording costs. Seller and Purchaser shall each be responsible to their attorney fees related to this transaction.

10. RISK OF LOSS: Seller agrees to keep its insurance in force until Purchaser completes this transaction and Seller delivers its deed to Purchaser. Any insurance proceeds from loss to Property shall be paid to Seller and credited toward the balance due of the purchase price. Purchaser shall have the option to void this Agreement in the event of loss.

11. TITLE SEARCH AND CONDITION OF PROPERTY: Purchaser stipulates that it has made a full inspection of the Property and is purchasing the same with full knowledge and understanding as to the condition of the Property without any reliance upon representations being made by Seller. Purchaser agrees to purchase the Property in "AS-IS" condition, and shall have any inspections necessary to determine the condition of the Property as Purchaser shall desire. Seller will grant Purchaser or Purchaser's agent permission to make any reasonable inspections necessary to satisfy Purchaser in discovering the condition of the Property. Purchaser further understands and agrees to obtain its own title report for said Property if any title opinion or report is required.

12. GENERAL ASSURANCES: To Seller's knowledge, during the time Seller has owned the Property: (i) no orders of any public authority are currently pending against the Property and no public authority has issued any notice with respect to any violation of any applicable health and safety or other code or governmental regulation affecting the Property; (ii) no future assessments are in effect and no work has been performed which might result in the imposition of any additional assessment or the filing of any mechanic's lien against the Property; (iii) no litigation or other action is pending or threatened against Seller or the Property, and Seller is not aware of any facts that might result in the filing of any litigation or other action relating to Seller's ownership and ability to convey the Property; (iv) Seller has disclosed to Purchaser in writing all material adverse information of which Seller is aware, if any, concerning the physical condition of the Property or the ownership or development of the Property; and (v) Seller is not insolvent under any customary definition of that term, and no proceedings are pending or threatened by or against Seller under the federal Bankruptcy Code, or any insolvency or debtor's relief act, or seeking the appointment of a trustee, receiver, liquidator or other similar official.

Seller has a separate Exchange of Farmland Agreement, ("Exchange Agreement"), to acquire the Property from Regula executed concurrent with this Agreement. Paragraph 9(b) of the Exchange Agreement contains certain representations from Regula to Seller which survive Seller's closing of the Property exchange with Regula. Seller shall assign said representations to Purchaser concurrent with the closing of this Agreement.

13. RAILROAD CROSSING: Purchaser, after the closing of this Agreement, will investigate the possibility of extending the current dead end location of Hamer Avenue to the east across the existing railroad track and onto the Property, at Purchaser's sole discretion. Seller acknowledges this extension will likely require one of the existing railroad crossings in the Village of Jackson Center to be closed. If Purchaser cannot extend Hamer Avenue across the railroad track, Seller shall have no legal right or remedy against Purchaser.

14. DETENTION BASIN CONSTRUCTION & DRAINAGE REDIRECTION: As additional consideration for the purchase of the Property, Purchaser shall construct a Detention Basin on the southern half of the Property at Purchaser's expense, with said construction to be completed within one (1) year of the closing contemplated by this Agreement. See depiction on Exhibit A. C & M Properties, Inc., an Ohio corporation ("C&M"), owned and controlled by Seller's principals, together with its successors and assigns, shall be permitted to connect a real estate development known as Hudson Lake Estates to the Detention Basin at the cost of One Hundred Five Thousand and 00/100 Dollars (\$105,000.00) to be paid by C&M, its successors and assigns, as C&M's contribution to the cost of the Detention Basin, as stated in paragraph 15 of this Agreement. C&M shall be responsible for all of its own engineering studies and calculations related to drainage of Hudson Lake Estates and connecting to the Detention Basin. Purchaser and C&M shall work mutually together to ensure the Detention Basin design is engineered to accommodate Purchaser's needs and C&M's needs. Seller or C&M shall pay for the excavation and installation of the drainage tile to connect Hudson Lake Estates to the headwall of the Detention Basin.

C&M owns real property east of the Property, being 27.34 acres, more or less, permanent parcel number 20-0615276.002, (the "C&M Parcel"). See the attached **Exhibit B**. As additional consideration for the purchase of the Property, within one (1) year of the closing contemplated by this Agreement, Purchaser shall redirect the storm water drainage on the southern portion of the C&M Parcel at Purchaser's expense into the Detention Basin. C&M, its successors and assigns, shall pay to Purchaser an amount not to exceed Twenty Five Thousand and 00/100 Dollars (\$25,000.00) as stated in paragraph 15 of this Agreement towards Purchaser's actual cost of materials necessary to complete the redirection of the storm water as Seller's contribution for the storm water redirection. The parties agree the materials to be used for this redirection may be oversized at the sole discretion of Purchaser, and for which C&M shall pay as part of the \$25,000.00. Purchaser and C&M shall work mutually together to ensure the redirection design is engineered to accommodate Purchaser's needs and C&M's needs. The area where the redirection is constructed shall be dedicated to the public in the form of a general utility easement for: storm water, wastewater, cable, electricity, and other utilities, as permitted by law, to be maintained by Purchaser prospectively, with Seller, its successor and assigns, to mow and maintain the grass. The survey cost related to the utility easement shall be paid by Purchaser.

15. PAYMENT TO PURCHASER: Seller and C&M shall execute a Note and Mortgage to Purchaser in the amount of One Hundred Thirty Thousand and 00/100 Dollars (\$130,000.00) concurrent with the closing of the purchase of the Property, subject to adjustment as stated in this paragraph. The Note shall bear interest at the rate of three percent (3%) per annum and shall have a maturity date of one (1) year from the date of closing. The Note shall: (i) be secured by a good and valid first mortgage lien on the C&M Parcel; and (ii) contain a provision that if either or both the construction and installation of the Detention Basin and/or storm water redirection is not completed, accepted, and in use within one (1) year of the closing contemplated by and under this Agreement, the maturity date of the Note described in paragraph 15 of this Agreement shall be extended, without interest after the initial one (1) year term, until either or both the Detention Basin and/or the storm water redirection are completed. If one but not both the Detention Basin and the storm water redirection is completed within the one year completion period from the date of the closing contemplated by this Agreement, the amount due the Village attributed under the Note for the completed project shall be due and payable to the Village on the Note's maturity date. The amount due Purchaser under the Note attributed to the storm water redirection, i.e. \$25,000.00, shall be reduced by the difference between Purchaser's actual cost of materials in connection with the construction and installation of the storm water redirection from the C&M Parcel to the Detention Basin and Twenty Five Thousand and 00/100 Dollars (\$25,000.00), if any. If the actual cost of materials is greater than \$25,000.00, Seller shall have no further or additional obligation and responsibility and Purchaser shall pay such excess.

16. SURVIVAL OF ASSURANCES, REPRESENTATIONS & WARRANTIES: The assurances, representations and warranties of Purchaser and Seller stated in this Agreement shall survive two (2) years from and after closing.

17. COUNTERPARTS/FACSIMILE TRANSMISSION: This Agreement may be signed in counterparts and the signatures on this Agreement may be transmitted by facsimile or email. Facsimiles or emails of signatures will be deemed to constitute original signatures and facsimiles or emails of this Agreement (or counterparts of this Agreement) containing the signatures, whether original or facsimiles or emails, of all the parties will be deemed to constitute a signed enforceable Agreement.

18. REAL ESTATE BROKER AND COMMISSION: Seller and Purchaser acknowledge and agree there is no real estate broker involved in the drafting and execution of this Agreement or the sale of the Property. The parties acknowledge there shall be no real estate broker commission paid whatsoever related to the Agreement.

19. PURCHASER'S COOPERATION: Purchaser agrees Seller may choose to affect an IRC § 1031 tax deferred exchange, which will not delay the closing or cause additional expense to Purchaser. Seller's rights under this Agreement may be assigned to a qualified intermediary, for the purpose of completing such an exchange. Purchaser agrees to cooperate with Seller and the qualified intermediary in a manner necessary to complete the tax deferred exchange.

20. BINDING EFFECT: This Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, devisees, legatees, successors and assigns of the parties hereto. The parties stipulate that the law of the State of Ohio shall be binding upon the interpretation and

enforcement of this Agreement. Further, the parties acknowledge this Agreement contains all terms and conditions applicable to this transaction and there are no other representations, warranties or agreements except as specifically set forth herein.

21. SURVIVAL OF OBLIGATIONS: The obligations of the Purchaser described in paragraph 14 of this Agreement, and the obligations of Metzcom and C&M under paragraph 15 of this Agreement, are not merged with, but survive, the closing on the purchase of the Property as described in this Agreement.

The parties have hereunto executed this Agreement the day and year first above mentioned.

SELLER:
METZCOM DEVELOPMENT, LLC

By: 
Jeffrey P. Cummons, Member

By: 
Gary W. Metz, Member

PURCHASER:
VILLAGE OF JACKSON CENTER

By: 
Bruce Metz, Village Administrator


By: 
Scott Klopfenstein, Mayor

EXHIBIT "A"
(183)



Shelby County, OH - Amy L. Berning, Auditor
(937) 498-7202 -
aberning@shelbycountyauditors.com

View Search Results

Sort By: Parcel Low to High Remove Clear

JACKSON CENTER

HARKNER

(1 of 2)

Parcel:	20-06-15-230-006
Owner:	REGULA RICKEY L & DEBRA D
Address:	DAVIS ST
Acres:	18.775
Sale Date:	4/5/2005
Sale Price:	\$70,000
Total Market Value:	\$139,340

Zoom to [Dock Window](#) [Report Measure](#)

0 - 0 of 0 results

« (1) » 20

Export as: | TAX | Download

400ft

2020-05-04

→ Detention basin

[Click here for Legal Disclaimer](#)

(Description of Regula Property)

Tract I

Situate in the County of Shelby, in the State of Ohio, and in the Township of Jackson, viz:

Commencing at a point seventy rods west and thirty rods five feet and six inches south of the northeast corner of the northeast quarter of Section Fifteen Town Seven South of Range Seven East, thence south one hundred twenty-nine rods and eleven feet to the half section line between said premises and the Alice Leininger lands; thence west with the half section line to the east line of the right of way of the D.T. and I. Railroad, thence in a northerly direction with the east line of said right of way to a point 14 feet south of the west corner of Lot No. forty-four in the First Addition to the I.L. Davis Addition to the Village of Jackson Center, Ohio, thence east parallel with the Stephenson Pike to the place of beginning containing nineteen acres more or less.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED REAL ESTATE:

Situate in the Village of Jackson Center, Township of Jackson, County of Shelby, and State of Ohio:

SITUATE IN THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 15, TOWN 7 SOUTH, RANGE 7 EAST, IN THE VILLAGE OF JACKSON CENTER, JACKSON TOWNSHIP, SHELBY COUNTY CONGRESS LANDS, OHIO. BEING MORE FULLY BOUNDED AND DESCRIBED AS FOLLOWS:

Commencing for reference at a 5/8" x 30' iron pin with cap set at the Northeast corner of lot number 143 in the Israel L. Davis First Addition to the Village of Jackson Center, as shown on Plat Volume 2, Page 254 of the Shelby County records; Thence South 2°-45'-00" West 146.00 feet along the East line of said lot and the West right of way line of East Street to the South line of a vacated 14-foot wide alley right of way, being the place of beginning for this premise;

Thence continuing South 2°-45'-00" West 66.00 feet along a new division line to a 5/8" x 30" iron pin with cap set;

Thence North 87°-15'-00" West 141.96 feet along a new division line to a 5/8" x 30" iron pin with cap set on the Easterly right of way of the Indiana and Ohio Railroad;

Thence along the Easterly right of way North 8°-20'-12" West 67.26 feet to the South line of said vacated alley right of way, witness a 5/8" x 30" iron pin with cap set North 8°-20'-12" West 7.13 feet from this point;

Thence South 87°-15'-00" East 154.90 feet along said south line returning to the place of beginning for this premise.

Exhibit A
(243)

Containing 0.225 acres more or less, all being subject to any legal easements and highways of record.

Bearings based upon an assumed meridian and are being used to denote angle measurements only.

Plat of survey is recorded in Volume 28, Page 347

Randall J. Magoto, Ohio Professional Surveyor Number 7768, based upon a field survey completed on September 28, 2001, prepared the above description.

Deed Reference for Exception: Volume 974, Page 362 of the Official Records of Shelby County, Ohio.

Instrument Reference: Book 1513, Page 196 of the Shelby County Official Records.

Tract II

Situate in the Village of Jackson Center, Township of Jackson, County of Shelby, and State of Ohio:

Being the South half of that portion of a certain vacated alley adjacent to the north line of the above described Tract I.

See Ord. No. 01-26, Village of Jackson Center, Ohio, recorded at Volume 932, Page 297 of the Official Records of Shelby County, Ohio.

This conveyance is subject to all legal highways, easements, rights-of-way, conditions and restrictions of record.

Instrument Reference: Book 1513, Page 197 of the Shelby County Official Records.

Exhibit A
(3 of 3)

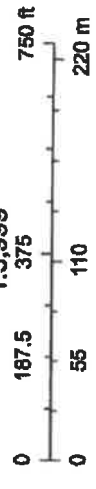
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February 8, 2021

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(191)

1:3,999



Shelby County Ohio
Shelby County Ohio